



CITY OF SAN ANTONIO
TRANSPORTATION & CAPITAL IMPROVEMENTS

**REQUEST FOR COMPETITIVE SEALED PROPOSALS:
FOR
DISTRICT 3 COMMUNITY CENTER
(Project No. 40-00348)**

(RFCSP-TCI-01122015SY)

Notice Regarding Prohibition on Campaign or Officeholder Contributions for Individuals and Entities Seeking High-Profile Contracts. Under Section 2-309 of the San Antonio Municipal Campaign Finance Code, the following are prohibited from making a campaign or officeholder contribution to any member of the San Antonio City Council, candidate for the San Antonio City Council or political action committee that contributes to a San Antonio City Council election, from the tenth (10th) business day after a project solicitation has been released until thirty (30) calendar days after the project has been awarded by the San Antonio City Council (hereafter referred to as the "black out period"):

1. Legal signatory of a high-profile contract;
2. Any individual seeking a high-profile contract;
3. Any owner or officer of an entity seeking a high-profile contract;
4. The spouse of any of these individuals;
5. Any attorney, lobbyist or consultant retained to assist in seeking contract.

A high-profile contract cannot be awarded to an individual or entity if a prohibited contribution has been made by any of these above-listed individuals or entities during the established black out period for this solicitation.

RFCSP ISSUE DATE:
JANUARY 12, 2015

PROPOSAL DEADLINE:
FEBRUARY 10, 2015 AT 2:00 P.M. LOCAL TIME

TABLE OF CONTENTS

Section	Page Number
I. BACKGROUND	3
II. SCOPE OF WORK AND GENERAL REQUIREMENTS	3
III. SCHEDULE OF EVENTS	5
IV. PRE-SUBMITTAL CONFERENCE	5
V. PROPOSAL DOCUMENT REQUIREMENTS AND EVALUATION CRITERIA	5
VI. SUBMISSION INSTRUCTIONS	10
VII. AMENDMENTS TO RFCSP	11
VIII. RESTRICTION ON COMMUNICATIONS	11
IX. AWARD OF CONTRACT AND RESERVATION OF RIGHTS	12
X. SBEDA ORDINANCE COMPLIANCE PROVISIONS	14

ATTACHMENTS

Form 1 –Proposal Cover / Signature Sheet	RFCSP Attachment 1
Form 2 – Proposal Checklist and Table of Content	RFCSP Attachment 2
Form 3 – Discretionary Contracts Disclosure Form and Instructions	RFCSP Attachment 3
Form 4 – Litigation Disclosure Form	RFCSP Attachment 4
Form 5 – SBEDA: Subcontractor/Supplier Utilization Plan	RFCSP Attachment 5
Form 6 – Price Proposal Form and Unit Pricing Form	RFCSP Attachment 6
General Conditions for City of San Antonio Construction Contracts	Exhibit A
General Wage Decision Number TX150280 01/02/2015 TX280	Exhibit B
Payment and Performance Bond Templates	Exhibit C

CITY OF SAN ANTONIO DISTRICT 3 COMMUNITY CENTER (PROJECT NO. 40-00348)

I. BACKGROUND

The City of San Antonio (hereafter referred to as "City"), Transportation and Capital Improvements Department (hereafter referred to as "TCI") is seeking qualifications and Requests for Competitive Sealed Proposals (hereafter referred to as a "RFCSP") from qualified firms to provide construction services for the District 3 Community Center (hereafter referred to as "the Project").

On Saturday, May 12, 2012, City voters approved a \$596 million Bond Program. As the largest Bond Program in City's history, the approved 2012-2017 Bond Program addresses a wide array of public infrastructure throughout City, from street and drainage improvements to new sidewalk construction, bridge replacements, traffic upgrades, new libraries and improvements to existing City-owned facilities. TCI, under direction from the City Engineer, shall oversee the implementation of the 2012-2017 Bond Program.

Under the Bond Program, \$87 million of Bond Program funds is designated for Parks, Recreation and Open Space Improvements. Of the designated \$87 million of Bond funds, \$6,000,000.00 has been earmarked for the District 3 Community Center.

II. SCOPE OF WORK AND GENERAL REQUIREMENTS

The Project consists of the construction of an approximately 13,000 square foot Senior Community Center, with parking for 200 vehicles and associated site work. The building will be a single story steel structure with a concrete pier foundation. Mechanical mezzanines also will be provided. The exterior finish materials will consist of metal panels, stone, metal windows and large glass and metal storefront areas. A metal sunshade structure shall be provided around the perimeter of the building. Interior construction shall be metal stud framing and gypsum wallboard-type construction. Interior finishes include polished concrete, carpet and tile flooring, painted and tile wall finishes and exposed painted and acoustical ceilings. Special systems shall include, but are not limited to, HVAC systems, plumbing, electrical, mechanical services, interior and exterior lighting, fire protection and alarm systems, security, A/V, data and communications. Site improvements shall include utilities, storm drainage, concrete sidewalks and driveways, 200-space asphalt parking lot, vehicular drop-off area, drainage improvements, low-impact design features and landscaping and site accessibility for individuals with disabilities. A dog park also is included in the Project's scope.

Plans and Specifications of the Construction Documents: A compact disc with the Plans, Specifications and Special Conditions in electronic format may be obtained by General Contractor proposers only, free of charge, from the office of Debra J. Dockery, Architect, PC weekdays between 9:00 am and 5:00 pm. Dockery's offices are located at 118 Broadway, Suite 516, San Antonio, Texas 78205, telephone (210) 225-67130. Subcontractors or suppliers may obtain a compact disc with the contract documents by payment of a non-refundable check for Twenty-Five Dollars (\$25.00). Respondent shall notify the Project Consultant, Debra Dockery Architects, and City in writing at minimum eleven (11) calendar days prior to the scheduled RFCSP proposal deadline if discrepancies, ambiguities and/or omissions are found in the Project Plans and/or Specifications or if further information or interpretation is desired. Answers by Consultant and/or City shall be given in writing to all prospective Respondents in Addendum form to this solicitation. All provisions and requirements of such issued addenda shall supersede or modify affected portions of the Project Plans and/or Specifications. All addenda shall be made a part of the Project's Contract Documents. No other explanation or interpretation, with regard to provisions and/or requirements shall be considered official or binding upon City. Addenda shall be posted on the web at www.sanantonio.gov/rfplistsings/, along with the Project solicitation documents. Respondent understands and agrees that Respondent is responsible for obtaining all issued Addenda and adhering to all requirements in any issued Addenda. City shall not be responsible for incorrect information obtained through other sources.

Calendar Days: Respondent understands and agrees that the scope of work on the Project is to be completed in full on or before **365** calendar days. This Project requires the posting of one **(1)** project sign.

Liquidated Damages for Delay in Substantial Completion and Final Completion: In the event the selected Respondent fails to achieve Substantial Completion and/or Final Completion of the Project by the dates established for Substantial Completion and/or Final Completion, Respondent hereby accepts and agrees it shall pay City the sum indicated on the table below for each and every calendar day of unexcused delay in achieving Substantial Completion and/or Final Completion beyond the Scheduled Completion/Final Completion dates. Any sums due and payable hereunder to City shall be payable, not as a penalty, but as Liquidated Damages representing an estimate of delay damages sustained by City, estimated at the time of executing the Contract. Such Liquidated Damages shall apply regardless of whether Respondent has been terminated by City prior to Substantial Completion, so long as Respondent's actions or inactions contributed to the delay. Such Liquidated Damages shall be in addition to and not in preclusion of any recovery of actual damages resulting from other defects in Respondent's performance hereunder, for matters other than delays in Substantial Completion/Final Completion. When City reasonably believes that Substantial Completion/Final Completion will be inexcusably delayed, City shall be entitled, but not required, to withhold from any amounts otherwise due to Respondent an amount then believed by City to be adequate to recover liquidated damages applicable to such delays. If and when Respondent overcomes the delay in achieving Substantial Completion and/or Final Completion or any part thereof, for which City has withheld payment, City promptly shall release to Respondent those funds withheld but no longer applicable as Liquidated Damages.

Contractual Milestone	Contractual Milestone Description and Requirements	From	To	Liquidated Damages
1	Substantial Completion	Date of the Issued Notice to Proceed	365 calendar days	\$500.00 per day
2	Final Completion	Date of Substantial Completion	30 calendar days	\$250.00 per day

General Conditions for City of San Antonio Construction Contracts: Respondent shall review City's General Conditions for City of San Antonio Construction Contracts, provided and attached hereto, labeled as RFCSP **Exhibit A** and incorporated herein by reference, and provide written comments and/or concerns regarding said General Conditions in Respondent's submitted proposal under "**Tab 8**". If Respondent does not have any comments and/or concerns, Respondent shall indicate this in Respondent's submitted proposal under "**Tab 8**". If no objections are submitted by the Respondent, City shall presume that Respondent accepts the terms, conditions and requirements of City's General Conditions as evidenced by Respondent's execution of its Proposal Cover/Contract Signature Page, attached hereto and labeled as **Form 1** to this solicitation.

Wage & Labor Standard Provisions & Prevailing Wage Rates: The selected Respondent shall comply with City Ordinance Number 2008-11-20-1045, concerning Wage and Hour Labor Standard Provisions for City of San Antonio Construction Projects (amending City Ordinance Number 71312). This is a public works Contract and Chapter 2258 of the Texas Government Code requires that not less than the prevailing wage rate for work of a similar character in this locality shall be paid to all laborers, workmen and mechanics employed in the construction of this Project. This prevailing wage requirement includes overtime regulations. Respondent shall refer to the General Wage Decision Number TX150280 01/02/2015 TX280, attached hereto, incorporated by reference herein and labeled as "**RFCSP Exhibit B**".

Payment and Performance Bonds: Upon City Council approval, the selected Respondent shall furnish City with payment and performance bonds, in accordance with the provisions of Chapter 2253 of the Texas Government Code. The payment and performance bond templates required for this Project have been attached hereto, incorporated by reference herein and labeled as "**RFCSP Exhibit C**".

III. SCHEDULE OF EVENTS

The following tentative schedule has been prepared for this project.

Pre-Submittal Conference:	January 20, 2015
Deadline for Submission of Written Questions:	January 23, 2015
Responses Due:	February 10, 2015
Interviews, if necessary	February 2015 - TBD
Anticipated City Council Consideration	April 2015 - TBD

IV. PRE-SUBMITTAL CONFERENCE

A Pre-Submittal Conference is scheduled to be held on **January 20, 2015 at 3:00 P.M.** at the **Municipal Plaza Building, C Room, located at 114 W. Commerce, San Antonio, Texas 78205**. Respondent is encouraged to prepare and submit its questions in writing three (3) calendar days in advance of the Pre-Submittal Conference, in order to expedite the proceedings.

City's responses to questions received by this due date may be distributed at the Pre-Submittal Conference, as well as being posted on City's website at <http://epay.sanantonio.gov/RFPListings/>.

This meeting place is accessible to disabled persons. Interpreters for the Deaf shall be requested at least 48 hours prior to the meeting. For assistance, call (210) 207-7245 Voice/TTY.

Any oral responses provided by City staff at the Pre-Submittal Conference shall be preliminary. A written summary of the Pre-Submittal Conference shall contain City's official responses to issues raised during the Pre-Submittal Conference and posted on City's website at <http://epay.sanantonio.gov/RFPListings/>. Any oral response given at the Pre-Submittal Conference that is not confirmed in the posted written summary from the Pre-Submittal Conference or in a subsequent addendum shall not be official or binding on City. Only written responses shall be official. All other forms of communication with any officer, employee or agent of City shall not be binding on City.

V. PROPOSAL DOCUMENT REQUIREMENTS AND EVALUATION CRITERIA

City will conduct a comprehensive, fair and impartial evaluation of all proposals received in response to this RFCSP. City may appoint a selection committee to perform the evaluation(s) of the received proposals. Each proposal received by City shall be analyzed to determine overall responsiveness and qualifications to the RFCSP. The selection committee may select all, some or none of the Respondents. If City elects to conduct interviews, Respondent may be interviewed and re-scored based upon these same criteria or other criteria, to be determined by the selection committee.

Respondent's proposal shall include the following items in the following sequence:

- A. EXECUTIVE SUMMARY – Respondent shall include a one (1) page Executive Summary with its submitted proposal. The summary shall state the number of years Respondent has been in business, number of years Respondent has been in business at its local office, Respondent's local office address and number of employees employed in Respondent's local office.
- B. PROPOSAL COVER / CONTRACT SIGNATURE PAGE (Form #1) – Respondent shall include the completed Proposal Cover/ Contract Signature Page with its proposal, indexed and labeled as "**Tab 1**". The Proposal Cover/ Contract Signature Page shall be signed by a person (or persons) authorized to bind the entity (or entities) submitting the Proposal. Proposals signed by a person other than an officer of the company, a partner of the firm or the managing member of as LLC shall be accompanied by evidence of authority. Joint ventures require signatures from all entities participating in the joint venture. Joint ventures are required to provide legal proof of the joint venture, such as a joint venture agreement, as an attachment

to its proposal. By executing the Proposal Cover/ Contract Signature Page, Respondent agrees to be bound by the terms therein. Respondent acknowledges it has received all Addenda, and agrees to be bound by the terms, conditions and requirements of this submitted Proposal, all documents listed in the RFCSP Submittal Checklist and Table of Contents, the enabling City Ordinance and all of the associated documentation that form the entire Contract to which Respondent shall be bound, upon the approval of the San Antonio City Council.

- C. PROPOSAL CHECKLIST AND TABLE OF CONTENTS (Form #2) – Respondent shall complete this form, which is to be used as the Table of Contents for its proposal. The checklist shall be indexed and labeled as **“Tab 2”** in its proposal.
- D. DISCRETIONARY CONTRACTS DISCLOSURE FORM (Form #3) – Respondent shall complete the form online at, <https://www.sanantonio.gov/eforms/atty/ContractsDisclosureForm.pdf>, print a copy of Respondent’s completed form and submit the form with its proposal, labeled as **“Tab 3”** only with its ORIGINAL PROPOSAL. If Respondent is proposing as a team or joint venture, each party to the team or joint venture shall complete and submit a separate form with Respondent’s original proposal.
- E. LITIGATION DISCLOSURE FORM (Form #4) – Respondent shall complete a Litigation Disclosure form and utilize additional pages for explanation, if necessary, indexed and labeled as **“Tab 4”** in its proposal. If Respondent is proposing as a team or joint venture, each party to that team or joint venture shall completed and submit a separate form with its proposal.
- F. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (FORM 5) – Respondent shall submit a completed and signed Subcontractor/Supplier Utilization Plan for this solicitation only with its ORIGINAL PROPOSAL. All Respondents are required to submit a completed Subcontractor/Supplier Utilization Plan with its firms’ commitment to satisfy a **(22%) M/WBE** subcontracting goal and a **(3%) AABE** subcontracting goal. Absent a waiver granted by the SBO, failure of Respondent to submit a completed Subcontractor/Supplier Utilization Commitment Form in its response shall render its response **NON-RESPONSIVE**. This form shall be indexed and labeled as **“Tab 5”** in the submitted proposal.
- G. PRICE PROPOSAL FORM AND UNIT PRICING FORM (Form #6) – Respondent shall submit a completed and signed Price Proposal Form and Unit Pricing Form only with its ORIGINAL PROPOSAL. City shall evaluate Respondent’s Price Proposal Form for the base proposal and all listed alternate(s), if any. These forms shall be indexed and labeled as **“Tab 6”** in Respondent’s submitted original proposal.
- H. PROPOSAL GUARANTEE (Indexed and labeled as **“Tab 7”**) – Respondent’s proposal shall be accompanied by an original Bid/Offer/Proposal Bond form, submitted only with its ORIGINAL PROPOSAL and issued by a corporate surety company licensed to conduct business in the State of Texas, in the amount of not less than five percent (5%) of the greatest total amount of the Offer/Bid/Proposal, payable without recourse to the order of City. These forms of security shall serve as a guarantee, if awarded the Contract, Respondent promptly shall enter into Agreement with City, as required by the Contract Documents, and execute Performance and Payment Bonds on City-provided bond forms.
- I. GENERAL CONDITIONS FOR CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS (Indexed and labeled as **“Tab 8”**) – Respondent shall review General Conditions for City of San Antonio Construction Contracts, provided hereto, incorporated by reference herein and labeled as **“RFCSP Exhibit A”**, and provide written comments and/or concerns regarding said General Conditions. If Respondent does not have any comments and/or concerns, Respondent shall acknowledge its review of City’s General Conditions and indicate no comments or concerns this in this **“Tab 8”**. If no objections are submitted by the Respondent, City shall presume Respondent shall accept the award of the Project as presented, if selected.
- J. PROOF OF INSURABILITY (Indexed and labeled as **“Tab 9”**.) – Respondent shall submit a copy of its current insurance certificate or letter from insurance carrier.
- K. LETTERS OF REFERENCE (required) – Respondent shall provide a maximum of five (5) letters of reference. Letters of Reference shall be indexed and labeled as **“Tab 10”**.

- L. **STATEMENT OF QUALIFICATIONS** – Respondent shall provide a narrative document that addresses all evaluation criteria in **Section II** herein of this RFCSP solicitation. Sufficient information regarding past projects and key personnel's experience shall be provided by Respondent, to indicate that Respondent's team has met or exceeded the minimum qualifications provided in **Section II** of this RFCSP.

City shall conduct a comprehensive, fair and impartial evaluation of all proposals received, in response to this RFCSP, within forty five (45) days of receipt of the proposals. It currently is anticipated City shall appoint and utilize a selection committee to perform said evaluation.

The following Evaluation Criteria shall be used, in recommending the award of this Contract:

A. Experience and Qualifications of Prime Firm, Key Subcontractors and Key Personnel with similar Construction Projects (30 Points)

Respondent shall respond to the following items, as they relate to Scope of Services:

1. Experience (Indexed and Labeled as "Tab 11") – City shall consider the relevance of past experience of Respondent. Respondent shall provide a narrative, on (1) page, describing the Respondent's qualifications, as they relate to the referenced scope of services in this solicitation.

2. Project Sheets (Indexed and Labeled as "Tab 12") – Respondent's proposal shall include a maximum of three (3) project sheets, limited to one (1) page for each project included, which shall describe similar construction projects Respondent has completed within the last five (5) years. Each project sheet shall include the following:

1. Name and Description of the completed project, including any similarity to the Project defined in this solicitation;
2. Year(s) of work on the cited project;
3. Respondent's role in the cited project;
4. Project Manager;
5. Superintendent;
6. Cited project's original and final construction contract amounts (explain inconsistencies);
7. Cited project's proposed completion date and the actual completion date achieved (explain inconsistencies);
8. Cited project's owner's name and the name of the representative (if different) who served as the day-to-day liaison for the cited project, in the following format:
 - a. Name of Owner: _____
 - b. Name of Owner's representative: _____
 - c. Representative's Phone Number: _____
 - d. Representative's E-mail: _____

3. Proposed Key Personnel/Organizational Chart (Indexed and Labeled as "Tab 13") – Provide a detailed organizational chart of Respondent's proposed team, identifying key personnel who will be committed to work on the various tasks for this Contract.

Label assignments as:

- Project Manager
- Superintendent
- Safety Manager
- Chief Estimator

4. Resumes (Indexed and Labeled as "Tab 14") – Respondent shall submit one (1) page resumes for all its key team members. Resumes should link to project sheets and also may include additional previously-completed relevant projects not highlighted in the project sheets.

Resumes also shall include:

- the license type (if applicable) and number of years licensed,
- Number of years employed with the firm
- Number of years' experience in proposed role corresponding to the assignments included

in the organizational chart
City of residence

B. Understanding of the Project and Proposed Management Plan (18 Points)
(Indexed and labeled as “Tab 15”)

Respondent shall describe its understanding of the Project and specific issues and challenges Respondent likely sees shall be involved, as well as the availability of labor resources (Respondent's capacity to perform) in executing the scope of work required. Respondent shall submit information in a brief narrative plan clearly and concisely describing the challenges it foresees and its approach to managing the Project.

1. Project Understanding

Respondent shall limit its response to the following items to one (1) page:

- Describe Respondent's understanding of the primary objectives of the Project; and
- Describe the constraints and technical challenges related to design and construction Respondent foresees and Respondent's approach to addressing each.

2. Construction Management

Respondent shall limit its response to the following items to a total of two (2) pages:

- Describe Respondent's project management approach and team organization, for the provision of the services outlined in this solicitation;
- Describe Respondent's Quality Control/Quality Assurance process, approach and capabilities to maintain quality control of the construction documents and construction;
- Describe Respondent's approach to managing the quality of Subcontractors;
- Describe Respondent's ability to coordinate work with all Project stakeholders;
- Describe Respondent's approach to assuring timely completion of construction, including methods for schedule recovery, if necessary.

C. Respondent's Team's Experience with San Antonio Region Issues and Past Experience with City of San Antonio Contracts (10 Points)

1. City is interested in evaluating Respondent, Respondent's Team and Respondent's key Sub-Consultant's/Subcontractor's experience with San Antonio issues, as may be evidenced by work in San Antonio and the surrounding area, during the past five (5) years. In narrative form, using a maximum of two total (2) pages, briefly describe Respondent's and Respondent's Team's experience in the following areas, referencing projects relating to that experience. (Note: Respondent may reference projects it included in project sheets under **Criteria A** above or include other projects, but no additional project sheets shall be provided for this criteria.) Respondent's experiences information shall be indexed and labeled as “**Tab 16**”:

- Local area construction costs and practices;
- Local environmental community, conditions and constraints;
- Involvement in project development, as it relates to public awareness in the local area;
- Respondent's experience with public utilities within the San Antonio and/or surrounding area;
- Local site development; and
- Building code requirements.

2. Kindly be aware a portion of the scoring for this **Criterion C** may be based on City's Consultants'/Contractors' Scorecard, as well as other documentation and experience with City projects, generated by City staff and City Consultants on previous City projects. City shall consider

Respondent's history of compliance with project programs, schedules and budgets on previous City projects. **No items shall be submitted by Respondent for portion of the scoring. Further, Respondent shall not be penalized if it has not done work on City of San Antonio projects.** Specific items that may be used for consideration under this portion may include, but are not limited to:

- Timely completion of City projects;
- Respondent's cooperative working relationship with City;
- Respondent's prompt payment of Sub-Consultants/Subcontractors at all levels;
- Respondent's compliance with other City contract terms;
- Respondent's compliance with City Ordinances on substitution/addition/deletion of Subcontractors;
- Respondent's provision of contracting opportunities for S/M/WBEs;
- Respondent's compliance with City standards;
- Respondent's conformance to City budget requirements.

D. Price Proposal (30 Points) – Respondent shall complete the Price Proposal Form (attached hereto and labeled as Form 6)

City shall evaluate Respondent's **Price Proposal Form** for the base proposal and all listed alternate(s), if any. The submitted Price Proposal reflecting the lowest price total, including the base proposal, allowances (if any) and all City-accepted alternates (if any), shall receive the maximum thirty (30) points. Kindly refer to formula and example listed below:

Formula: Lowest price proposal/Firm's price proposal X 30 points = Score

Example:

RESPONDENT:	PROPOSAL AMOUNT (INCLUDING ALLOWANCES AND CITY-ACCEPTED ALTERNATES):	CALCULATION:	POINTS AWARDED:
A	\$650,000.00	$595,000/650,000 \times 30$	27.46
B	\$625,000.00	$595,000/625,000 \times 30$	28.56
C	\$600,000.00	$595,000/600,000 \times 30$	29.75
D	\$595,000.00	$595,000/595,000 \times 30$	30.0

E. SBEDA - SBE Prime Contract Program (12 Points)

Certified SBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area responding to this solicitation as Prime Contractors proposing at least 51% SBE participation (Prime and/or Subcontractor) will receive twelve (12) evaluation criteria percentage points.

No evaluation criteria percentage Points will be awarded to non-SBE Prime Contractors through subcontracting to certified SBE firms.

Each proposal shall be analyzed, to determine overall responsiveness, and consideration shall be given to a combination of price and other factors, such that City may determine which Respondents' proposal will

provide the best value to City. If City elects to conduct interviews of one or more Respondents, in connection with this solicitation, Respondent(s) shall be notified in writing and an interview date shall be scheduled.

Evaluation Criteria Summary	Maximum Points
A. Experience and Qualifications of Prime Firm, Key Subcontractors and Key Personnel with similar Construction Projects	30 Points
B. Respondent's Team's understanding of the Project and Proposed Management Plan	18 Points
C. Respondent's Team's Experience with San Antonio Region Issues and Past Experience with City of San Antonio Contracts	10 Points
D. Respondent's Submitted Price Proposal	30 Points
E. SBEDA - SBE Prime Contract Program	12 Points
Total Maximum	100 Points

VI. SUBMISSION INSTRUCTIONS

When submitting a proposal in person, visitors to City Hall shall allow time for security measures. Visitors to City Hall shall be required to enter through the east side of the building. The public shall pass through a metal detector and x-ray machine located in City Hall lobby. All packages, purses and carried items shall be scanned during City's regular business hours of 7:45 a.m. to 4:30 p.m. After members of the public proceed through the metal detector, they will sign in and receive a visitor's badge. For those that might require the use of a ramp, entry is available on the south side of City Hall (Dolorosa side). Security shall meet the ramp user in the basement with a hand scanner.

Respondent shall submit a total of **six (6)** proposals, which shall include one **(1)** original unbound Qualification signed in ink (which shall include the cited documents that only are to be included in Respondent's original submission), and **seven (7)** reprinted copies of its proposal in a sealed package, clearly marked on the front of the package "**RFCSP: DISTRICT 3 COMMUNITY CENTER (PROJECT NO. 40-00348)**". All proposals shall be received in the Office of the City Clerk **NO LATER THAN 2:00 PM ON TUESDAY, FEBRUARY 10, 2015** at the address indicated below. Any proposal received after this time shall not be considered.

Physical Address:

Office of the City Clerk, Attn: Transportation and Capital Improvements/Contract Services
100 Military Plaza
City Hall, 2nd Floor,
San Antonio, Texas 78205

Proposals sent by facsimile or email shall not be accepted.

Respondent's response to this solicitation shall be complete and well organized. Adherence to the maximum page criterion is critical; each page side (maximum 8 1/2" x 11") with criteria information shall be counted. Respondent shall adhere to the page limitations for each section, as stated herein. Pages which have project photos, charts, and graphs shall be counted towards the maximum number of pages. Front and back covers, Table of Contents pages and tabbed divider pages shall not be counted if these pages do not contain proposal information. The use of recycled paper is encouraged. Three-ring binders are **NOT** permitted. With regards to other types of binding, plastic (not metal) spiral or "comb" binding is highly recommended. Unnecessarily elaborate brochures, artwork, bindings, visual aids, expensive paper or other materials, beyond that which is sufficient to present a complete and effective submission, are not required. All pages shall be numbered. Margins shall be no less than 1" around the perimeter of each submitted page. Electronic files, websites or URLs shall not be included as part of the proposal, other than the CD specified above. Each proposal shall include the sections and attachments in the sequence

listed in the **RFCSF Section V**, Proposal Document Requirements & Evaluation Criteria, and each section shall be divided by tabs and indexed as indicated in this RFCSF. Failure to meet the above conditions may result in disqualification of the proposal.

A Respondent who submits a response to this RFCSF correctly shall reveal, disclose and state the true and correct names of the individual, proprietorship, corporation and/or partnership of Respondent, clearly identifying the responsible general partner and all other partners who would be associated with the contract, if any. No nick-names, abbreviations (unless part of the legal title), shortened or short-hand or local "handles" shall be accepted in lieu of the full, true and correct legal name of an entity. These provided names shall comport exactly with the corporate and franchise records of the Texas Secretary of State and Texas Comptroller of Public Accounts. Individuals and proprietorships, if operating under other than an individual name, shall match with exact Assumed Name filings. A Corporate Respondent and a Respondent Limited Liability Company shall include the 11-digit Comptroller's Taxpayer Number on the signature page of Respondent's submitted Proposal.

VII. AMENDMENTS TO RFCSF

Changes, amendments or written responses to questions received in compliance with **Section VIII**, Restrictions on Communication herein, may be posted on City's website at <http://epay.sanantonio.gov/RFPListings/>. It is Respondent's responsibility to review this site and ascertain whether any amendments have been made prior to submission of its proposal. If Respondent does not have access to the Internet, Respondent shall notify City, in accordance with **Section VIII**, Restrictions on Communication, it wishes to receive copies of changes, amendments or written responses to questions by mail or facsimile.

No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in this RFCSF and all changes to this RFCSF – if any – shall be made by City only in writing.

VIII. RESTRICTION ON COMMUNICATIONS

Respondent is prohibited from communicating with elected City officials and their staffs regarding this RFCSF or Respondent's proposal from the time this RFCSF has been released until the contract is posted as a City Council agenda item. A person or entity who seeks or applies for a City contract, or any other person acting on behalf of such person or entity, is prohibited from contacting City Officials and/or employees, regarding such a contract after a request for proposal (RFP), request for qualification (RFQ), request for competitive sealed proposals (RFCSF) or other discretionary solicitation has been released. This no-contact provision shall conclude when the contract is posted as a City Council agenda item. If a contact is required with City Officials and/or employees, such contact shall be done in accordance with procedures incorporated into the solicitation document. Violation of this provision by Respondents or their agents may lead to disqualification of their offer from consideration. As used herein, City Official is defined as the Mayor; members of City Council; Municipal Court Judges and Magistrates; City Manager; Deputy City Manager; City Clerk; Deputy City Clerk; Assistant City Clerk; Assistant City Managers; Assistants to City Manager; all City department heads and assistant department heads; Internal Auditor and Assistant Internal Auditors; Compliance Auditor; Assistant to City Council; Assistants to City Council, including contract personnel; Assistant to Mayor; Assistants to the Mayor, including contract personnel; Executive Secretaries; Public Utilities Supervisor; members of bid committees; members of the Historic and Design Review Commission; Zoning Commission; and members of any board or commission that is more than advisory in nature.

These restrictions on communications extend to "thank you" letters, phone calls, emails and all other contact that results in the direct or indirect discussion of this RFCSF and/or proposal submitted by Respondent. Violation of this provision by Respondent and/or its agent may lead to disqualification of Respondent's proposal from consideration.

Exceptions to the restrictions on communication with City employees include:

1. Respondent may ask verbal questions concerning this RFCSF at the Project's Pre-Submittal Conference.

2. Respondent may submit written questions concerning this RFCSP to the Staff Contact Person listed in the address below until **4:00 PM on January 23, 2015**. Questions received after the stated deadline shall not be answered.

Questions may be sent via email or certified mail, return receipt requested, also shall be accepted and should be addressed to:

Sandy Yturri, Senior Management Analyst
City of San Antonio, Transportation & Capital Improvements
Contract Services Division
Commerce Street, 9th floor, San Antonio, TX 78205

210-207-1393 (fax)
Mary.Yturri@sanantonio.gov

It is highly encouraged that all questions be sent by electronic mail

3. Respondents and/or their agents are encouraged to contact the Small Business Office of the Economic Development Department for assistance or clarification with issues specifically related to City's Small Business Economic Development Advocacy (SBEDA) Program policy and/or completion of the SBEDA form. The point of contact is Ms. Leticia Callanen. Ms. Callanen may be reached by telephone at (210) 207-3996 or by e-mail at Leticia.Callanen@sanantonio.gov. This exception to the restriction on communication does not apply, and there is no contact permitted to the Small Business Office regarding this solicitation, after the solicitation closing date.
4. Respondent shall provide responses to any questions asked of it by City's Staff Contact Person and/or his/her designee about City's SBEDA Program both before and after responses are received and opened. During the interview stage of this selection, if any, verbal questions to Respondent and Respondent's answers and explanations shall be permitted. If interviews are conducted, Respondent shall not bring lobbyists. City reserves the right to exclude any persons from such selection committee meetings/interviews as it deems in City's best interests.

IX. AWARD OF CONTRACT AND RESERVATION OF RIGHTS

City reserves the right to award one, more than one or no contract(s) in response to this RFCSP.

- A. A Contract, if awarded, shall be awarded to a Respondent whose proposal is deemed most advantageous to City, as determined by the selection committee and upon the approval by the San Antonio City Council.
- B. City may accept any proposal in whole or in part. If subsequent contract negotiations are conducted, such negotiations shall not constitute a rejection or alternate RFCSP on the part of City. However, final selection of a Respondent is subject to San Antonio City Council approval.
- C. City reserves the right to accept one or more proposals or reject any or all proposals received in response to this RFCSP and to waive informalities and irregularities in any proposal received. City also reserves the right to terminate this RFCSP, reissue a subsequent solicitation and/or remedy technical errors in the RFCSP process.
- D. By executing the Proposal Cover / Contract Signature Page, Respondent agrees to be bound by the terms therein. Respondent acknowledges it has received all Addenda and agrees to be bound by the terms, conditions and requirements of this submitted proposal, all documents listed in the RFCSP Submittal Checklist and Table of Contents, the enabling City Ordinance and all of the associated documentation that form the entire Contract to which Respondent shall be bound, upon the approval of the San Antonio City Council. All Contract documents are not binding on City until approved by the San Antonio City Attorney's office and the San Antonio City Council. No work shall commence on the subject Project until Respondent provides the necessary evidence of bonds and insurance required in City's General Conditions for City of San Antonio Construction Contracts and until City signs the Notice to Proceed. In the event the parties cannot negotiate within the time

specified by City, City reserves the right to terminate negotiations with the selected Respondent and commence negotiations with another Respondent.

- E. This RFCSP does not commit City to enter to an agreement or award any services related to this RFCSP, nor does it obligate City to pay any costs incurred by Respondent in the preparation or submission of a response or in anticipation of a contract.
- F. City administers its design and construction management through an Internet-based management system. All vendors shall be required to use City's system and submit Project schedules as City dictates.
- G. **Conflicts of Interest:** Respondent acknowledges that it is informed that the Charter of City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract entered into with City or any City agency, such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: City officer or employee; his/her parent, child or spouse; a business entity in which he/she or his/her parent, child or spouse owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) or more of the fair market value of the business entity; or a business entity in which any individual or entity listed by Respondent is a Subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- H. Respondent is required to warrant and certify that it, its officers, employees and agents are neither officials nor employees of City, as defined in Section 2-42 of City's Ethics Code. (Discretionary Contracts Disclosure) – Instructions and web-link to electronic form are included in Form 3 of RFCSP.

Independent Contractor: Respondent understands, accepts and agrees, if selected, it and all persons designated by it to provide services in connection with a contract, is/are and shall be deemed to be an Independent Contractor(s), responsible for its/their respective acts or omissions, that City shall in no way be responsible for Respondent's actions and that none of the parties to this award shall have authority to bind the other or to hold out to third parties that it has such authority.

- I. Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons or their agents who seek to contract for the sale or purchase of property, goods or services with City shall file a completed Conflict of Interest Questionnaire (hereafter referred as "CIQ"), with City Clerk not later than the seventh (7th) business day after the date that the person:
 - (1) begins contract discussions or negotiations with City; or
 - (2) submits to City an application, response to a request for proposal, offers, correspondence or another writing related to a potential agreement with City. The CIQ form is available from the Texas Ethics Commission at:

<http://www.ethics.state.tx.us/forms/CIQ.pdf>.

In addition to the CIQ form, City requires individuals to submit a CIQ Addendum. The CIQ Addendum is available from City:

<http://www.sanantonio.gov/atty/ethics/pdf/OCC-CIQ-Addendum.pdf>.

Completed CIQ forms and CIQ addendum forms may delivered by hand to the Office of the City Clerk at City Hall, 2nd floor, 100 Military Plaza, San Antonio, TX 78205 or may be mailed to the Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. Respondent shall consult its own legal advisor if it has any questions regarding the statute, CIQ form or CIQ Addendum.

- J. All proposals become the property of City upon receipt and shall not be returned. Any information deemed to be confidential by Respondent clearly should be noted on the page(s) where confidential information is contained; however, City cannot guarantee that it shall not be compelled to disclose all or part of any public

record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law or pursuant to a Court order.

- K. Any cost or expense incurred by the Respondent associated with the preparation of its proposal, the Pre-Submittal Conference or during any phase of the selection process, if any, shall be borne solely by Respondent
- L. **Solicitation Process Review:** If Respondent desires a review of the solicitation process followed by City, Respondent shall deliver a written request to the Director of TCI within seven (7) calendar days from the date the Notice of Non-Selection was sent. When the TCI Director receives a timely written request, the TCI Director (or his/her designee) shall review Respondents concerns and City's solicitation process for legitimacy and procedural correctness. After performing a full review, the TCI Director shall notify Respondent in writing of his/her determination.
- M. **Debriefings:** In an effort to improve solicitation responses, TCI is making available on its web site a "Solicitation Response Tip List" that includes the top common items historically that "make or break" submissions to City. Providing this information prior to the due date of the proposal may provide Respondent with an opportunity to develop a better response for a solicitation. As a result of this up-front effort, each Respondent is entitled to one (1) debriefing per calendar year – available after the San Antonio City Council has made the award sought by Respondent – if Respondent:

(a) is not the selected Respondent; and

(b) has not been debriefed since January 1, 2015.

Once Respondent has been debriefed, it shall not be eligible for future debriefings within that calendar year. Any Respondent meeting the above criteria that desires an individual proposal debriefing shall deliver a written request to the TCI Contract Services Division within seven (7) calendar days from the date a Notice of Non-Selection was sent.

- N. City reserves the right to verify any and all information submitted by Respondents at anytime during the solicitation/evaluation process.
- O. Final approval of a selected firm(s) is subject to the action of the San Antonio City Council.
- P. City reserves the right to contact any Respondent to negotiate a contract, if such action is deemed desirable by City.

X. SBEDA ORDINANCE COMPLIANCE PROVISIONS

A. Solicitation Response and Contract Requirements and Commitment

Respondent understands and agrees that the following provisions shall be requirements of this solicitation and the resulting contract, if awarded, and by submitting its Response, Respondent commits to comply with these requirements. In the absence of a waiver granted by the SBO, failure of a Prime Contractor to commit in its response, through a fully-documented and signed SBO-promulgated Subcontractor/Supplier Utilization Plan form, to satisfying the S/M/WBE subcontracting goal shall render its response NON-RESPONSIVE.

Waiver Request - A Respondent may request, for good cause, a full or partial Waiver of a **specified subcontracting goal** included in this solicitation by submitting the *Respondent Subcontracting Waiver Request form* (available at <http://www.sanantonio.gov/SBO/Forms.aspx>) with its solicitation response. The Respondent's Waiver request must fully document subcontractor unavailability despite the Respondent's good faith efforts to comply with the goal. Such documentation shall include all good faith efforts made by Respondent including, but not limited to, which subcontractors were contacted (with phone numbers, e-mail addresses and mailing addresses, as applicable) and the method of contact. **Late Waiver requests will not be considered.** **Exception Request** - A Respondent may, for good cause, request an Exception to the application of the SBEDA Program if the

Respondent submits the *Exception to SBEDA Program Requirements Request form* (available at <http://www.sanantonio.gov/SBO/Forms.aspx>) with its solicitation response. The Respondent's Exception request must fully document why: (1) the value of the contract is below the \$50,000 threshold for application of the SBEDA Program; or (2) no commercially-useful subcontracting opportunities exist within the contract scope of work; or (3) the type of contract is outside of the scope of the SBEDA Ordinance. **Late Exception Requests will not be considered.**

B. SBEDA Program

City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on City's Economic Development (EDD) website page and is also available in hard copy form upon request to City. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by City pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

C. Definitions

Affirmative Procurement Initiatives (API) – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise ("S/M/WBE") Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein City requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

Certification or "Certified" – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically,

an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by Contractor to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by City as fraudulent if Contractor attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the Contractor shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the Contractor and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Good Faith Efforts – documentation of the Contractor’s or Respondent’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor’s posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of Contractor’s Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – an adult person that is of legal majority age.

Industry Categories – procurement groupings for City inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”

Minority/Women Business Enterprise (M/WBE) – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by City.

M/WBE Directory – a listing of minority- and women-owned businesses that have been certified for participation in City’s M/WBE Program APIs.

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the City. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

Minority Group Members – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – City department or authorized representative of City which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to Contractors and/or Subcontractors and vendors for contracted goods and/or services.

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by City for purposes of providing goods or services for City. For purposes of this Agreement, this term refers to the Contractor.

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by City. For purposes of this Agreement, Contractor is the Respondent.

Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive – a firm’s submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which City’s MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

SBE Directory - a listing of small businesses that have been certified for participation in City's SBE Program APIs.

SBE Subcontracting Program – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified SBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of

contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein there have been ongoing disparities in the utilization of available SBE Subcontractors.

When specified by the GSC, the SBE Subcontracting Plan or Good Faith Efforts plan submitted by Contractor may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for SBE firms.

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) – the office within the Economic Development Department (EDD) of City that is primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager – the Assistant Director of the EDD of City that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor or Contractor in furtherance of the Prime Contractor's performance under a contract or purchase order with City. A copy of each binding agreement between the Contractor and its subcontractors shall be submitted to City prior to execution of this contract Agreement and any contract modification Agreement.

Suspension – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in the City's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of Contractor's and/or S/M/WBE firm's performance and payment under City contracts due to the City's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

Subcontractor/Supplier Utilization Plan – a binding part of this contract Agreement which states the Contractor's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract Agreement, and states the name, scope of work, and dollar value of work to be performed by each of Contractor's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this Agreement to be approved by the EDD Director or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and

that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Agreement is not inclusive of MBEs.

D. SBEDA Program Compliance – General Provisions

As Contractor acknowledges that the terms of the City's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the City's SBEDA Policy & Procedure Manual are in furtherance of the City's efforts at economic inclusion and, moreover, that such terms are part of Contractor's scope of work as referenced in the City's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. Contractor voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the City. Without limitation, Contractor further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. Contractor shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding Contractor's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;
2. Contractor shall cooperate fully with any City or SBO investigation (and shall also respond truthfully and promptly to any City or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Contractor or its Subcontractors or suppliers;
3. Contractor shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. Contractor shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Contractor's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Contractor to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Contractor of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. Contractor shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the City, as well as any transfer or change in its ownership or business structure.
6. Contractor shall retain all records of its Subcontractor payments for this contract

for a minimum of four years, or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years, or as required by state law, following the final determination of litigation, whichever is later.

7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a Contractor's Subcontractor / Supplier Utilization Plan, the Contractor shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the Contractor and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. Contractor acknowledges that City will not execute a contract or issue a Notice to Proceed for this project until the Contractor and each of its Subcontractors for this project have registered and/or maintained active status in the City's Centralized Vendor Registration System, and Contractor has represented to City which primary commodity codes each registered Subcontractor will be performing under for this contract.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

The City has applied the following contract-specific Affirmative Procurement Initiatives to this contract. Contractor hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 1. (a), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, CONSULTANT affirms that if it is presently certified as an SBE, CONSULTANT agrees not to subcontract more than 49% of the contract value to a non-SBE firm, and

M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 2. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. Contractor agrees to subcontract at least **twenty-two percent (22%) the amount indicated on the 010 and Utilization Plan for this project** of its prime contract value to certified M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that Contractor submitted to City with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by Contractor on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of Contractor to attain this subcontracting goal for M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the City, and may result in debarment from performing future City contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon M/WBE subcontracting goals, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law, and

Segmented M/WBE Goal. In accordance with SBEDA Ordinance Section III. D. 2. (d), this contract is being awarded pursuant to Segmented M/WBE Goals. Contractor agrees to subcontract at least **three percent (3%)** of the contract value to a certified African American Business Enterprise (AABE) firm headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). This three percent

(3%) subcontracting goal will also count toward the aforementioned twenty-two percent (22%) M/WBE subcontracting goal. The Subcontractor / Supplier Utilization Plan that Contractor submitted to City with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified AABE Subcontractors to be used by Contractor on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each AABE Subcontractor, and documentation including a description of each AABE Subcontractor's scope of work and confirmation of each AABE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of Contractor to attain this subcontracting goal for AABE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the City, and may result in debarment from performing future City contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon AABE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Subcontractor Diversity: The City strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the M/WBE subcontracting goal of 22% and AABE subcontracting goal of 3% that have been established for this contract.

While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio Construction industry, as reflected in City's Centralized Vendor Registration system as of November 2014, African-American owned firms represent approximately 2.93% of available subcontractors, Hispanic-American firms represent approximately 17.10%, Asian-American firms represent approximately 1.14%, Native American firms represent approximately 0.29%, and Women-owned firms represent approximately 4.86% of available construction subcontractors.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the Contractor represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Contractor shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Contractor's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Contractor shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

G. Prompt Payment

Upon execution of this contract by Contractor, Contractor shall be required to submit to City accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the Contractor's reported subcontract participation is accurate. Contractor shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from City. In the event of Contractor's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to Contractor, and no new City contracts shall be issued to the

Contractor until the City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Violations, Sanctions and Penalties

In addition to the above terms, Contractor acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and
5. Disqualification of Contractor or other business firm from eligibility for providing goods or services to City for a period not to exceed two years (upon City Council approval).